

1 of roughly 40 to 50 million, less than that is
2 a significant hindrance to a network on
3 several different levels.

4 Q Let me ask you about those. Did
5 you reach an opinion as to whether Tennis
6 Channel's ability to secure advertising, and
7 to prosper through advertising was impacted by
8 its distribution levels?

9 A Yes. As I alluded to earlier, you
10 often can't even submit a plan if you don't
11 have the requisite number of homes and
12 distribution.

13 Q Does limited distribution impact
14 programming rights? .

15 A It does, because owners of rights
16 want their, in my experience want their events
17 to be seen as widely as possible so as not to
18 damage the value of that event, because people
19 wouldn't be able to see it. So, they favor
20 wider distribution vehicles to do their deals,
21 no matter what kind of money you offer them.

22 Q Does limited distribution impact

1 the ability of a network to draw new viewers
2 into it?

3 A It does in a number of ways. The
4 one thing, a good deal of viewing to any
5 network comes from casual viewers who were not
6 regular viewers of that channel, but happened
7 to find it, or hear about it, sample it, and
8 some of them stick. And most networks make a
9 great effort to try to get some of those pass
10 through viewers to stay with the channel
11 through various stunts and so forth. If
12 you're not distributed, if they can't get you
13 literally, then obviously you're not going to
14 get any of those casual viewers into your
15 tent.

16 It also means, if you have limited
17 viewership, that it's much harder for you to
18 get publicity. You're not -- experience with
19 the channels that I've been involved in, you
20 couldn't even get into the TV Guide listings,
21 they wouldn't list our channel until you reach
22 this national distribution threshold, because

1 they've got a lot of networks to deal with,
2 and they give that space to the ones that have
3 wide distribution.

4 There are several other, if you
5 want me to go into them, reasons why
6 distribution is critical for a newer growing
7 network.

8 Q What are those?

9 A Well, the amount of money that a
10 network can put into its own promotion, buying
11 promotion is limited. Obviously, they're
12 getting less revenue since they have less to
13 sell, as I said before. And the amount of
14 money that is devoted, therefore, to marketing
15 and promotion is limited. The first thing to
16 get cut, traditionally, in any business, I
17 guess, is your marketing budget if times are
18 tough, so they don't have as much to spend on
19 paid advertising. They don't get as much free
20 advertising. They tend to become invisible in
21 the media world, which in this competitive era
22 is very difficult.

1 Q As I understand the testimony
2 you've just given, these are consequences,
3 generally, from limited distribution?

4 A Yes.

5 Q Does having limited distribution
6 specifically from Comcast, in your opinion,
7 carry specific consequences?

8 A Well, one of the things that I
9 asked for and was given was a count of the
10 number of mentions of Tennis Channel versus
11 Golf Channel during 2010 I believe it was. I
12 would have asked for Versus, but it's such a
13 generic name you couldn't get a count. But we
14 could get counts for the others. And that's
15 in my report here someplace, that the number
16 of press mentions, this free publicity,
17 basically, for the networks was something like
18 5-1, or 8-1, or something like that. It was
19 enormously in favor of the Golf Channel over
20 Tennis Channel. So, that was an indicator of
21 what kind of attention that the Golf Channel
22 was getting vis a vis the Tennis Channel.

1 Q Does getting low penetration from
2 a company like Comcast given its position in
3 the market have particular impact on a
4 network?

5 A Oh, yes. My own experience in this
6 field is that the first thing that a network
7 that is growing wants to do is to try to get
8 exposure on the market leader, because all
9 cable distributors are not created equal. If
10 one of them dominates the market, what we
11 sometimes call in the business the 800 pound
12 gorilla, others will be influenced by that,
13 not only because they just like them, or
14 anything like that, but for very practical
15 reasons. Wide distribution through a major
16 distributor puts you in many major cities,
17 gets you a lot of attention, gets you
18 publicity, gets you the sort of press that I
19 was talking about. That puts pressure on the
20 other MSOs in that area, or distributors in
21 that area to carry you, as well.

22 So, distribution by a major

1 distributor can have -- as opposed to a
2 smaller one can have a disproportionate effect
3 on your overall growth.

4 MR. SCHMIDT: Thank you, Mr.
5 Brooks.

6 THE WITNESS: Sure.

7 MR. SCHMIDT: We will pass the
8 witness at this time, Your Honor.

9 JUDGE SIPPEL: Cross-examination.

10 MR. TOSCANO: Thank you, Your
11 Honor. Good afternoon, Mr. Brooks.

12 THE WITNESS: Good afternoon.

13 CROSS-EXAMINATION

14 BY MR. TOSCANO:

15 Q You would agree that it's
16 legitimate for a cable company to be concerned
17 about how much it spends on programming.
18 Right?

19 A Yes.

20 Q And you would also agree that
21 consumers are concerned about the high cost of
22 cable service. Right?

1 A Yes.

2 Q And they think they are paying too
3 much for cable and satellite. Right?

4 A Yes, I've heard that frequently in
5 my studies.

6 Q In fact, in your written direct
7 you say that: "Realizing significant
8 subscriber growth and increased subscriber
9 fees is becoming increasingly difficult due in
10 part to consumer resistance." Right?

11 A Yes.

12 Q Tennis Channel doesn't buy
13 national Nielsen ratings. Right?

14 A That's correct.

15 Q So, there's no such thing as a
16 national Nielsen rating for Tennis Channel.
17 Correct?

18 A Not as reported by Nielsen, no.

19 Q Nielsen does calculate ratings for
20 Tennis Channel in individual local markets,
21 though. Right?

22 A Yes.

1 Q But none of the ratings for Tennis
2 Channel in your written testimony are for a
3 single local market. Right?

4 A No, that was intentional.

5 Q And, in fact, not a single one of
6 the ratings for Tennis Channel in your written
7 testimony was calculated by Nielsen. Right?

8 A Well, that's not strictly true.
9 Should I explain?

10 Q Could you identify the ratings for
11 Tennis Channel in your written testimony that
12 were calculated by Nielsen?

13 A Nielsen provides data which has to
14 be recalculated by the user. This is typical
15 for Nielsen, actually, to be in the form that
16 you see in that report. So, the data was
17 clearly created by Nielsen, the final number
18 that you see on the page was calculated from
19 Nielsen data.

20 Q And that recalculation of the
21 Nielsen was done by Tennis Channel. Right?

22 A Yes, it is typically done by the

1 user.

2 Q And, in fact, all of the ratings,
3 whether for Tennis Channel, or any other --
4 whether for Tennis Channel, Golf, or Versus
5 were calculated by Tennis Channel. Correct?

6 A Yes, that's how Nielsen works.
7 That's what they want.

8 Q And they were provided to you by
9 Tennis Channel. Right?

10 A Well, they were calculated -- they
11 weren't analyzed by the Tennis Channel. They
12 were calculated by them under my very rather
13 strict supervision.

14 Q And a rating is a fraction.
15 Right?

16 A That's correct.

17 Q And the numerator, or the number
18 on the top is a measure of households or
19 viewers watching. Right?

20 A Yes.

21 Q And the denominator, or the number
22 on the bottom is a measure of the total

1 audience. Right?

2 A No, actually not. That would be a
3 share. The rating, the denominator would be
4 the total number of homes, or viewers, or
5 whatever it is you're looking at that could
6 receive that network. That's a rating.

7 Q But that's not the denominator for
8 Nielsen National Rating, is it?

9 A Yes, the denominator for the
10 Nielsen National Rating for the broadcast
11 networks is all the television homes in the
12 United States, because they can all receive
13 the national network. The denominator for
14 cable networks on a national basis, it's
15 called a coverage area rating, is all of the
16 homes that can receive that cable network.
17 So, everybody that you could potentially -- if
18 you had 100 rating, you would be being viewed
19 in all of the homes that can receive you.

20 Q And we'll get to coverage area
21 ratings. You would agree that the local
22 market ratings that you use in your testimony

1 are different than the local market ratings
2 that Nielsen calculates. Right?

3 A Well, they're derived from the
4 local market ratings that Nielsen calculates.

5 Q So, they're different. Right?

6 A They're different because they
7 reflect an aggregated area, rather than the
8 specific 48 markets individually that make up
9 that area.

10 Q And aren't they also different
11 because they use a different denominator for
12 a particular local market?

13 A In any individual -- I want to be
14 careful and be clear on this. In any
15 individual market, the denominator for a total
16 market rate are the homes in that market, all
17 the television homes in that market. A
18 coverage area rating in that market would be
19 all the homes that can receive that cable
20 channel in that market. So, depending on which
21 one you're talking about, it would be a
22 different denominator for each market, if you

1 were doing individual market ratings.

2 For the aggregated area, which is
3 what I show there, it's the total number of
4 homes that can receive the cable network
5 across all 48 markets.

6 Q And when Neilsen calculates a
7 local market rating for a single market,
8 Neilsen uses a total market rating. Correct?

9 A Yes, that's because it's for the
10 benefit of local television stations, and
11 that's their universe.

12 Q And when Tennis Channel calculates
13 a local market rating for a single market, it
14 uses a coverage area rating. Correct?

15 A Yes, the reverse of what they do
16 nationally.

17 Q And the difference is that Tennis
18 Channel uses a smaller number in the
19 denominator, again, when calculating a rating
20 for a single local market. Right?

21 A Yes, appropriately, I think.

22 Q And as a result, the local market

1 ratings that Tennis Channel calculates for
2 itself are higher than the local market
3 ratings that Neilsen calculates for Tennis
4 Channel. Right?

5 A Neilsen -- yes, because Neilsen's
6 service is for the stations, not for the cable
7 companies. That's right.

8 Q And despite this difference in
9 methodology, you still refer to the ratings
10 calculated by Tennis Channel as Neilsen local
11 market ratings. Right?

12 A That's how they would be referred
13 to generally.

14 Q Is it your testimony that any
15 rating calculated using Neilsen data is a
16 Neilsen rating?

17 A Yes, that's Neilsen's position,
18 and my understanding, as well.

19 Q So, assuming that I were to take
20 the number of households that viewed Tennis
21 Channel in New York City, a number that I got
22 from Neilsen, and I were to divide it by the

1 number of households that receive Tennis
2 Channel in Washington, D.C. and, again, as
3 measured by Nielsen, would that be a Nielsen
4 rating?

5 A No, because that's crossing
6 markets.

7 Q So, it's not a Nielsen rating if
8 my calculations involve crossing Nielsen local
9 markets. Correct?

10 A No, that would be incorrect
11 calculation, wrong denominator.

12 Q And who determines that?

13 A The calculation is done by the
14 client, in general. Although, if the data is
15 to be published in any way, Nielsen reserves
16 and enforces the right to see your
17 calculations and approve that, so in some
18 cases, in fact, yes, they tell you how it's to
19 be calculated.

20 Q But, again, if the client crosses
21 local markets in computing its ratings, that's
22 not a Nielsen rating. Right?

1 A It would not be a legitimate
2 Nielsen rating, no, in this calculation.

3 Q Fair enough. Now, you mentioned
4 coverage area ratings.

5 A Yes.

6 Q And all of the ratings in your
7 written testimony are what are called coverage
8 area ratings. Right?

9 A Yes.

10 Q And as you explained, in the
11 coverage area rating for a cable network, the
12 denominator is the number of households that
13 receive that network. Right?

14 A The denominator, that's correct.

15 Q So, for networks with different
16 distribution, the denominators will be
17 different. Right?

18 A Yes, precisely the reason for
19 using them.

20 Q So, they don't have what's known
21 as a common denominator. Right?

22 A No, they do not have a common

1 denominator.

2 Q And all other things equal, a
3 network with less distribution will have a
4 higher coverage area rating. Right?

5 A A network with less distribution?
6 No.

7 Q All other things equal.

8 A What other things are you holding
9 equal?

10 Q Two networks, same number of
11 viewers, same -

12 A Same thousands of viewers?

13 Q Same local market.

14 A Same thousands of viewers?

15 Q Same thousands of viewers, same
16 local market, but one will have a coverage
17 area rating, one will be a total market
18 rating. The coverage area rating will be
19 higher. Right?

20 A Yes, of course, it's simple math.

21 Q And coverage area ratings don't
22 measure absolute audience. Right?

1 A Ratings don't measure absolute
2 audience. They are, as you said, an opening,
3 a percentage.

4 Q And that's why advertisers don't
5 have any use for them. Right?

6 A For ratings?

7 Q Yes, coverage area ratings.

8 A Not necessarily. Advertisers will
9 not buy on -- actually, they often don't buy
10 on ratings at all, they buy on thousands of
11 viewers delivered. But they sometimes buy on
12 ratings, and they generally buy on total area
13 ratings, which is functionally the same as not
14 adjusting for coverage, because they don't
15 care where you get your viewers from. So,
16 they will, however, sometimes look at coverage
17 area ratings, but it's not primarily used for
18 advertising purposes, because they want
19 numbers of viewers.

20 Q Right. So, you would agree that
21 advertisers don't have much use for coverage
22 area ratings. Right?

1 A No. No. That's basically how the
2 business works.

3 Q In your testimony, I'd like to
4 direct you to page 10. This has been marked,
5 I believe, as Tennis Channel Exhibit 17.

6 A Page 10 of mine?

7 Q Yes, Paragraph 18.

8 A All right.

9 Q You opine at the bottom of that
10 paragraph that: "Tennis Channel has become
11 very competitive in audience popularity with
12 more widely distributed networks where all can
13 be seen." Right? Those are your words.
14 Right?

15 A Yes.

16 Q I read that correctly?

17 A Yes.

18 Q And Versus and Golf Channel are
19 among the more widely distributed networks
20 that you're referring to. Right?

21 A Yes.

22 Q And you would agree that your

1 reference to households where all can be seen,
2 that implies a common denominator. Right?

3 A Yes. Well, households where all
4 can be seen, meaning that -- yes, I'm limiting
5 the base, in this case a multi-market rating,
6 to households which have the opportunity to
7 tune into any one of these three networks.

8 Q Okay. And you agree that it's
9 possible to calculate ratings for a sample of
10 households that receive all three networks,
11 Tennis Channel, Versus, and Golf Channel.
12 Right?

13 A Yes, that's a statistical model.
14 But, yes, that can be done.

15 Q And in that calculation, the
16 denominator for all three ratings would have
17 been equal. Right?

18 A In effect, it would be equal over
19 the 48 markets, yes.

20 Q Because it would be the same
21 households. Right?

22 A Well, it's not literally the same

1 households. What you do is take the --

2 Q I'm asking if you were only
3 looking at the households that receive Tennis
4 Channel, Golf, and Versus, then it would, in
5 fact, be those same households. Correct?

6 A That would be a cut-back sample,
7 as opposed to the coverage area rating that we
8 calculated here.

9 Q Right. I'm just asking about a
10 cut-back sample.

11 A Yes. And that's something, in
12 fact, we asked Nielsen about. On some
13 occasions, Nielsen can do that, but on some
14 occasions they say it's technologically too
15 difficult for them to do. That was the
16 situation here, so we could replicate that
17 information by coverage area ratings for each
18 of them in the same markets. If that's clear.

19 Q But if you used you call it a cut-
20 out rating?

21 A No, cut-back sample.

22 Q Cut-back sample. Thank you.

1 JUDGE SIPPEL: Cut-backs?

2 THE WITNESS: C-U-T-B-A-C-K.

3 JUDGE SIPPEL: All right.

4 THE WITNESS: I'm sorry I have to
5 get into technical terms.

6 JUDGE SIPPEL: No, that's okay.

7 (Simultaneous speech.)

8 BY MR. TOSCANO:

9 Q And if you had used the cut-back
10 sample it would be a common denominator.
11 Right?

12 A Yes, it would literally be only
13 those homes of Versus, for example, that can
14 also receive Tennis..

15 Q But you didn't do that, because
16 it's too difficult. Correct?

17 A No, Neilsen didn't do it because
18 they felt it was technologically difficult.

19 Q Okay. So, you're not really
20 opining about the audience popularity of
21 Tennis Channel, Versus, and Golf Channel in
22 households where all three networks can be

1 seen. Right?

2 A Well, if you cross the ways here,
3 but what I'm showing is the homes within each
4 market which can receive Tennis Channel, and
5 they how they view it, the homes within those
6 same markets that can receive Versus, and how
7 they view it, the homes within those same
8 markets that can receive Golf Channel, and how
9 they view it. So, in each case, I'm using
10 only the homes that can receive those channels
11 in those same markets, obviously for the same
12 day parts, and periods, and so forth.

13 Q But to be clear, those are three
14 different samples. Correct?

15 A Yes.

16 Q Because it's not your testimony -

17 A Well, the reason I hesitated, it's
18 the same markets, obviously, but it's somewhat
19 more homes for the more widely distributed
20 networks in those markets.

21 Q Correct. The coverage area
22 ratings for one cable network cannot be

1 compared to another cable network's coverage
2 area rating. Right?

3 A Oh, not at all. In fact, that's
4 an extremely common comparison on a national
5 level.

6 Q But isn't it the case that Nielsen
7 has put out guidance warning against comparing
8 coverage area ratings for different networks?

9 A They've been publishing them for
10 20 years, so I've never seen anything that
11 said you shouldn't use them.

12 Q You've never seen it.

13 A Are you talking about local, or
14 are you talking about national coverage area
15 ratings?

16 Q I'm talking about coverage area
17 ratings, generally.

18 A Generally?

19 Q Yes.

20 A That's what they publish
21 themselves, and post on their website for
22 national cable networks, coverage area

1 ratings.

2 Q But you haven't seen the Nielsen
3 guidance that warns against that. Correct?

4 A No.

5 MR. TOSCANO: Your Honor, may I
6 approach?

7 JUDGE SIPPEL: Please.

8 MR. TOSCANO: This has been marked
9 as Comcast Exhibit 911. It is not yet in
10 evidence.

11 (WHEREUPON, THE AFOREMENTIONED
12 DOCUMENT WAS MARKED COMCAST
13 EXHIBIT 911 FOR IDENTIFICATION)
14 BY MR. TOSCANO:

15 Q And because you've testified, Mr.
16 Brooks, that you haven't seen this before, I
17 will represent to you that this is from a
18 glossary of media terms on Nielsen's website.
19 And we've only printed out the entries for the
20 letter C just to make it more manageable.

21 MR. TOSCANO: And, Your Honor, in
22 fact the whole glossary is in Comcast's

1 exhibit, and has been admitted.

2 JUDGE SIPPEL: As 911. This says
3 911.

4 MR. TOSCANO: The entire exhibit
5 has been admitted.

6 JUDGE SIPPEL: This is an excerpt.

7 MR. TOSCANO: This excerpt has not
8 yet been admitted.

9 JUDGE SIPPEL: But it's an excerpt
10 of what's in the evidence.

11 MR. TOSCANO: That's exactly
12 right.

13 JUDGE SIPPEL: As what exhibit?

14 MR. TOSCANO: We will get that
15 number for you shortly.

16 JUDGE SIPPEL: Thank you.

17 MR. SCHMIDT: We have no
18 objection.

19 JUDGE SIPPEL: Thank you. There's
20 no objection, so why don't we move it in?

21 MR. TOSCANO: Please, I move this
22 into evidence.

1 JUDGE SIPPEL: Comcast Exhibit 911
2 with your excerpts from Nielsen's glossary of
3 terms of Nielsen Media is received in evidence
4 as Comcast Exhibit 911. And that's the
5 document the witness is looking at right now.

6 (WHEREUPON, THE DOCUMENT
7 PREVIOUSLY MARKED COMCAST EXHIBIT
8 911 FOR IDENTIFICATION, WAS
9 RECEIVED.)

10 BY MR. TOSCANO:

11 Q Mr. Brooks, I direct your
12 attention to the last page of this exhibit.
13 And since you've never seen this before, I
14 won't ask you to read it, I'll read it to you.

15 A May I --

16 Q Please, I'd like to read this and
17 ask a question.

18 MR. SCHMIDT: Your Honor, may he
19 answer --

20 (Simultaneous speech.)

21 JUDGE SIPPEL: Particularly for
22 clarification.